

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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INTERNATIONAL-MATEX TANK	)	
TERMINALS-ILLINOIS,	)	
	)	
Plaintiff,	)	Case No. 1:08-cv-1200
	)	
v.	)	Honorable Paul L. Maloney
	)	
CHEMICAL BANK,	)	
	)	
Defendant.	)	
	)	

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**ORDER ADOPTING REPORT AND RECOMMENDATION**

By opinion and order issued October 5, 2009, this court granted plaintiff a summary judgment declaring the defendant Bank liable on letter of credit no. 2007-19. The order referred to the magistrate judge the calculation of damages and interest due to plaintiff as a result of the judgment. After a period of discovery and briefing, the magistrate judge issued a report and recommendation on damages (docket # 83), finding that plaintiff is entitled to recover the face amount of the letter of credit (\$200,000.00) plus pre-judgment interest. The report and recommendation calculated pre-judgment interest, through April 28, 2010, at \$12,768.47, with daily interest accruing thereafter at a rate of \$19.75. Finally, in response to this court's direction, the magistrate judge considered the question whether defendant should be allowed to assert a defense of mitigation of damages and concluded that leave to assert this defense should be denied.

The time in which the parties were allowed to lodge objections to the report and recommendation under Fed. R. Civ. P. 72(b) has expired without action by either party. The court will therefore adopt the unobjected-to report and recommendation as the opinion of the court. The court will enter judgment in the principal amount of \$200,000.00, plus pre-judgment interest in the amount of \$13,361.01. (\$12,768.47 through April 28, 2010, plus \$592.53 for the period April 29 through May 28, 2010). Leave to amend the answer to assert a defense of mitigation will be denied. Accordingly:

IT IS ORDERED that the report and recommendation of the magistrate judge on damages (docket # 83) be and hereby is ADOPTED as the opinion of the court.

IT IS FURTHER ORDERED that judgment shall enter in favor of plaintiff in the principal amount of \$200,000.00, plus pre-judgment interest of \$13,361.01.

IT IS FURTHER ORDERED that leave to amend the answer to assert a defense of mitigation is hereby DENIED.

IT IS FURTHER ORDERED pursuant to Fed. R. Civ. P. 58(e), that entry of judgment will not be delayed for purposes of awarding attorney's fees. The court will award fees by separate judgment after the magistrate judge has issued a report and recommendation and all objections thereto have been reviewed.

Dated: May 28, 2010

/s/ Paul L. Maloney  
Paul L. Maloney  
Chief United States District Judge